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AZ CORP COMMISSION
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Attorneys for Valley Utilities Water Co., Inc.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF VALLEY UTILITIES WATER
COMPANY INC. FOR AN INCREASE IN
ITS WATER RATES FOR CUSTOMERS
WITHIN MARICOPA COUNTY, ARIZONA

DOCKET NO. W-01412A-99-0615

IN THE MATTER OF THE APPLICATION
OF VALLEY UTILITIES WATER
COMPANY INC. FOR AUTHORITY TO
ISSUE PROMISSORY NOTE(S) AND
OTHER EVIDENCES OF
INDEBTEDNESS PAYABLE AT
PERIODS OF MORE THAN TWELVE
MONTHS AFTER THE DATE OF
ISSUANCE

DOCKET NO. W-01412A-00-0023

Arizona Corporation Commission

DOCKETED

MAR 26 2009

DOCKETED BY

VALLEY UTILITIES WATER COMPANY, INC'S

LIMITED EXCEPTIONS TO

RECOMMENDED OPINION AND ORDER

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1 issues are inextricably linked to matters being addressed in both proceedings.¹

2 DISCUSSION

3 VUWCo does not wish to diminish the importance of complying with Commission
4 decisions. Transcript ("Tr.") at 29. Since 1998, the Company has grown from 610
5 service connections to approximately 1,400 service connections. Over the past ten years,
6 VUWCo management had been focused on operating, maintaining and improving its
7 domestic water supply system to provide customers reliable service and water quality at
8 reasonable rates and charges. In doing so, VUWCo did attempt to keep Staff informed of
9 its actions with respect to compliance issues, and in particular the Set-Aside funds.
10 However, the record in this proceeding demonstrates that not enough was done, nor was
11 the Company diligent enough in ensuring that it received proper Commission approvals
12 when necessary to deal with operational and/or financial hardships.

13 After careful consideration, VUWCo believes that the ROO properly identifies the
14 issues related to the collection and use of the Set-Aside funds, and is correct in concluding
15 that: (1) the existing Set-Aside funds should be released for servicing the outstanding
16 WIFA debt², and (2) more information is necessary to determine the extent of the
17 Company's non-compliance with previous Commission orders. In light of this view,
18 VUWCo is filing these Limited Exceptions to demonstrate to the Commission that,
19 despite the Company's shortcomings with respect to administrative compliance issues, the
20 actions management took in collecting and using the Set-Aside funds were made for the
21 overall benefit of the Company's customers.

22
23 ¹ The Commission's investigative powers in processing these two applications should provide Commission Staff the
24 regulatory tools necessary to further investigate the Company, as well as recommend appropriate relief in the event
25 that the Company's actions so warrant it. The Company asserts that any Order to Show Cause proceeding would be
26 duplicative of these efforts.

² On February 27, 2009, WIFA notified VUWCo that it would allow interest-only payments on WIFA Loan #2, to be
made from the Company's WIFA Debt Service Reserve account, through June 1, 2009. This arrangement may be
extended to January 1, 2010, on a month to month basis upon requisite notice to WIFA by the Company. Principal
and interest payments total \$16,482.87 per month.

1 **I. Decision No. 62908 (September 18, 2000)**

2 The Set-Aside funds were established by the Commission in Decision No. 62908
3 (September 18, 2000) to service WIFA debt that the Company was seeking in order to
4 make several plant improvements to the water distribution system. At the time of the
5 order, WIFA had not yet approved VUWCo's application for financing in the amount of
6 \$452,080, and the Commission was concerned about how the Company was going to
7 collect the required funds without having a detrimental impact on the Company's cash
8 flow. Consequently, the Commission adopted the Company's methodology of collection;
9 to set aside 1/12th of the annual debt service requirements on a monthly basis, but only
10 after the amount of the WIFA loan became known (WIFA Loan #1). In the interim, the
11 Commission required VUWCo to set aside \$6.35 from each customer's bill each month to
12 fund the Set-Aside account, which funds were to be used for the sole purpose of serving
13 WIFA Loan #1.

14 Unfortunately, the Company's compliance with the interim methodology set forth
15 in Decision No. 62908 for the collection Set-Aside funds was inconsistent. At times,
16 VUWCo did not deposit the required monthly amount due to cash flow issues, but would
17 supplement future deposits in order to keep the growing balance as consistent as possible.
18 ROO at ¶ 20. Nonetheless, once the Company knew the approved amount for WIFA
19 Loan #1 (authorized at \$52,350) in September 2003, \$163,466 had already been collected
20 and deposited in the Set-Aside account. Despite the inconsistent depositing schedule,
21 there would have been no detrimental impact to VUWCo's ratepayers had the Company
22 moved forward with WIFA Loan #1.

23 The WIFA Loan #1 financing application had been pending for some time before it
24 was finally addressed by the WIFA Board of Directors in early 2003. Between 2000 and
25 2003, rapid growth within the Company's service area allowed for the construction of
26 facilities intended to be financed with WIFA Loan #1 to be financed by developers

1 instead. Tr. at 19, Motion for an Order Confirming Compliance and Release of Set-Aside
2 Funds ("Motion") at Exhibit 1, page 2. WIFA Board member Steve Olea informed the
3 Company that WIFA Loan #1 funds could only be used for items that had been originally
4 approved in Decision No. 62908, and that new projects could not be added to the list. *Id.*
5 at 19-20. The WIFA application was then amended to include the cost of projects that had
6 not been completed and financed by developers between 2000 and 2003.

7 Based on his discussions with Steve Olea in early 2003, VUWCo President Robert
8 Prince believed that he had informed Staff about what the Company was doing to address
9 WIFA Loan #1 and compliance with Decision No. 62908. Direct Testimony of Robert
10 Prince at 7-8. In hindsight, it would have also been appropriate to provide a written
11 account to Staff of the steps the Company was taking to revise its WIFA Loan #1
12 application to finance any remaining projects, and for approval to remove what VUWCo
13 considered "excess" funds in the Set-Aside account. The Company did not withdraw any
14 "excess" Set-Aside funds until it believed it had met its financial obligations under
15 Decision No. 62908. ROO at ¶ 31.

16 While this does not excuse any non-compliance issues, the evidence should
17 demonstrate that Company management sincerely believed that it was addressing the
18 Commission's lone concern expressed in the order, which was the accurate determination
19 of the amount of Set-Aside funds needed to service WIFA Loan #1. Decision No. 62908
20 at ¶ 27 ["The Company's proposal will offer the more accurate set aside amount, is more
21 practical and should be adopted."]. And since the Set-Aside funds were not collected as a
22 surcharge, but rather as part of revenue included in VUWCo's normal operating expenses
23 when setting rates,³ it would have been appropriate for the Company to use them in to pay
24 operating expenses, which the Company did.

25
26 ³ Direct Testimony of Robert L. Prince at 6, lns. 6-17.

1 **II. Decision No. 67669 (March 9, 2005)**

2 According to the ROO at ¶ 37, the Company did not timely file certain annual
3 status reports required by the Commission in Decision No. 67669 (March 9, 2005)
4 regarding the collection and use of Arsenic Impact Fee (“AIF”) tariff funds. The ROO
5 states that AIF status reports for 2005, 2006 and 2007 were not filed until February 22,
6 2008, and that the 2008 AIF status report has not been filed. ROO at ¶ 37. While the
7 ROO is not entirely accurate concerning these compliance issues, it does nevertheless
8 highlight the need for VUWCo to improve its administrative and regulatory compliance
9 filings.⁴

10 **III. Decision No. 68309 (November 14, 2005)**

11 In Decision No. 68309, the Commission canceled the financing authority for WIFA
12 Loan #1, but authorized the Company’s request for approval of a second WIFA loan in the
13 amount of \$1,926,100 to construct and install arsenic remediation facilities (“WIFA Loan
14 #2). Decision No. 68309 at 26. The order also required VUWCo to file a report within 30
15 days that provided detailed information regarding the balance of Set-Aside funds collected
16 for the purpose of financing WIFA Loan #1. While VUWCo did send a report to the
17 Director of Utilities on December 29, 2005, the Company concedes that the report failed
18 to include an analysis of the extent to which application of the Set-Aside funds would
19 offset the amount of, or need for, an arsenic removal surcharge to service the debt
20 approved for WIFA Loan #2. ROO at ¶ 46.

21 It was not until May 7, 2007 that the Company filed the WIFA Loan Surcharge
22 Calculation required by Decision No. 68309. At the time of that filing, the Company
23 calculated that it would be able to use AIF account funds to service the debt on WIFA

24 _____
25 ⁴ According to Company records, the 2005 AIF status report was faxed to the Ms. Camella Leon on May 6, 2006; the
26 2006 AIF status report was sent to the Director of Utilities on January 30, 2007; the 2008 AIF status report was sent
to Mr. Brian Bozzo on January 20, 2009. The Company will produce these documents as part of the compliance
filings recommended in the ROO, if so adopted by the Commission.

1 Loan #2 through April 2008 (approximately 1 year) without the need for an arsenic
2 removal surcharge, or use of the Set-Aside funds. Motion at Exhibit 1. At the time of
3 Decision No. 68309, the Company had approximately \$101,725 in the Set-Aside account.
4 Since then, there has been further activity on the account. Rebuttal Testimony of Robert
5 L. Prince at Exhibit 4. During 2006, the Company withdrew \$60,200 for utility expenses,
6 and re-deposited \$22,400. During 2007, the Company withdrew \$35,044.25 for utility-
7 related expenses, and re-deposited \$26,500. In 2008, the Company re-deposited \$13,000
8 into the Set-Aside account.

9 Again, the Company concedes that it did not fully comply with Decision No.
10 68309, but has taken steps to address these issues. These include the May 7, 2007 filing,
11 and the Surcharge Application filed on November 13, 2008, which the Commission
12 ordered the Company to file *if necessary*. ROO at ¶ 43. But the expenditures were made
13 to address VUWCo's operational needs, including an interconnection for emergency
14 back-up water supply. Furthermore, ratepayers have received the benefit of not yet
15 having to pay a monthly arsenic removal surcharge, which the Commission envisioned
16 would be a likely impact on ratepayers when it rendered Decision No. 68309 in late 2005.

17 **IV. Decision No. 70052 (December 4, 2007)**

18 In Decision No. 70052, the Commission authorized the Company's issuance of an
19 interest-free, short-term note payable for up to \$129,000 within one year of the note's
20 issuance.⁵ In response to the ROO at ¶ 53, VUWCo has paid approximately \$37,000 of
21 the outstanding balance, and is preparing a Motion for Extension of Time to comply with
22 the pay-off requirements of Decision No. 70052, which it shall file with the Commission
23 on March 30, 2009.

24 **V. Decision No. 70138 (January 23, 2008)**

25 In Decision No. 70138, the Commission authorized an interim emergency rate

26 ⁵ The note is payable to Robert and Barbara Prince, the owners of VUWCo.

1 increase in the form of a well surcharge to cover the costs of a failed well. The Company
2 is currently in compliance with the requirements of Decision No. 70138.

3 **VI. Decision No. 70561 (October 23, 2008)**

4 VUWCo does not believe that filing the Accounting Order application prior to the
5 Surcharge Application violated Decision No. 68309, and could not find any support in
6 Decision No. 70561 for this assertion. ROO at ¶ 57. Rather, the Commission denied the
7 Accounting Order application because the Company's "request for a variance from
8 normal regulatory accounting treatment of arsenic-related O&M expenses would not
9 properly balance the interests of the Company and its ratepayers..." Decision No. 70561
10 at 11.

11 **CONCLUSION**

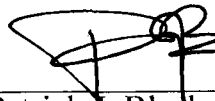
12 VUWCo stands before the Commission conceding that it has not complied with
13 previous orders regarding the collection and use of the Set-Aside funds. It agrees that
14 further investigation is warranted, and that its pending Surcharge Application and Rate
15 Application are both appropriate forums to address outstanding issues. The Company will
16 proceed to utilize the Set-Aside funds, if so approved, to service the WIFA Loan #2 debt
17 with full principal and interest payments beginning June 1, 2009, unless otherwise ordered
18 so by the Commission. VUWCo recognizes that internal changes must be made while
19 attempting to fully address the Commission's concerns.

20 But VUWCo respectfully requests that in considering the issues raised in this
21 proceeding, the Commission also take notice that the Company took steps it believed were
22 necessary to facilitate the growth and improvement of the water system, to address water
23 supply issues and to make the most efficient and best use of available funds for the benefit
24 of its customers. The daily operational challenges facing small water company owners
25 often overshadow equally important tasks related to regulatory compliance. To the extent
26 that VUWCo has not been diligent in keeping Staff and the Commission informed of

1 matters relevant to previous orders, or requesting approval of certain actions when
2 necessary, the Company submits that it has already moved forward to implement an
3 internal compliance program to address such matters. For the reasons outlined herein,
4 VUWCo respectfully requests that the Commission adopt the recommendations outlined
5 in the ROO, except with respect to the requirement of a separate Staff investigation and
6 potential Order to Show Cause proceedings. Separate investigations over the same issues
7 in separate dockets is not, in the Company's opinion, the most efficient and economical
8 way to facilitate Staff's investigation.

9 RESPECTFULLY SUBMITTED this 26th day of March, 2009.

10 FENNEMORE CRAIG, P.C.

11
12
13 By: 
14 Patrick J. Black
15 Attorneys for Valley Utilities Water Company, Inc.

16 **ORIGINAL** and **15 copies** of the foregoing
17 **FILED** this 26th day of March, 2009 with:

18 Docket Control
19 ARIZONA CORPORATION COMMISSION
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20 **COPY** of the foregoing was
21 **MAILED and sent via Electronic mail**
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2 **HAND-DELIVERED**
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